IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.834-DB of 2002
Date of Decision: October 23, 2006

Dharminder Kumar son of Birju Dass, resident of Village Karma, Police Station Hantranganj (Bihar)

.....Appellant

VERSUS

The State of Haryana

.....Respondent

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Pankaj Nanhera, Advocate
for the appellant.

Mr.SS Goripuria, Deputy Advocate General,
Haryana.

R S MADAN, J.

Challenge herein this appeal is the order of conviction and sentence dated 8-10-2002 passed by the Additional Sessions Judge, Jagadhri whereby the accused-appellant, Dharminder was sentenced to undergo life imprisonment under Section 302 of the Indian Penal Code and further ordered to undergo rigorous imprisonment for 10 years under Section 376 of the Indian Penal Code for murdering and committing rape on the person of Anju (aged 10/11 years) daughter of Dharam Pal resident of Village Khijrabad, Yamunanagar.

In brief, the facts of the case are that on 3-7-1998, Anju (deceased) (10/11 years) had gone to the fields of Om Pal-PW13 to cut and collect the fodder. Accused-Dharminder, who was the servant of Om Pal was harvesting the maize crop. He allowed her to cut the fodder from the fields. Finding Anju (deceased) alone, he took her to nearby water-channel and committed rape upon her. He put his male organ with full force into the vagina of deceased on account of which the posterior vault of the vagina was torn. She turned unconscious. The accused was frightened and strangulated her to death with the help of scarf(chunni). PW12-Jagiro, mother of the deceased had also gone to the fields of other persons to collect grass. Around 11.00 A.M. when she returned home, she found her daughter missing. After waiting for some time, she went in search of her daughter. When she went to the fields of Om Pal, accused was present there and was harvesting the maize crop. On her asking, the accused informed her that Anju (deceased) had come to collect the grass and after cutting the grass, she proceeded towards the water-channel to cut more grass. Smt. Jagiro went towards water-channel and found the dead body of her daughter lying there. She brought the dead body of her daughter to her home. On reaching home, she along with her husband went to the Police Station to lodge the FIR. On the way, they met Kanwar Singh ASI-PW17. She got recorded her statement Ex.PL after which endorsement Ex.PL/3 was sent to the Police Station for registration of the case. On the basis of the aforesaid statement, a formal FIR Ex.PL/2 was drawn. ASI Kanwar Singh then went to the house of Smt. Jagiro where he prepared the inquest report Ex.PL on the dead body of Anju. He also prepared the visual site plan of that place. The dead body of Anju was sent to Civil Hispital, Chhachhrauli for post mortem

examination. Thereafter, the ASI went to the place of occurrence from where the dead body was recovered and prepared the rough site plan Ex.PV.

On 4-7-1998, Dr.Neenu Kalra-PW8, conducted the post mortem examination on the dead body with the help of Dr.BS Deswal. On examination, she noticed that the mark of ligatures was present on neck below hyroid cartilage extending all around the neck. The skin was abraded anteriorly. Ligature mark was about 2.5 cm wide black in colour. On dissection ecchymosis was present in subcutaneous tissue. Sternomastoid are injured. Hyroid cartilage fractured. No ligature material was present. On local examination hymen was absent, edges of hymen were frayed. There was bluish discolouration and oedema of vaginal ring posterior fourrechete was torn and lacerated. Vagina admitted two fingers. Uterus was small. Prepubertal size. Posterior vault of vagina was torn ½ ' long tear placed transversely and was abdomen deep. The finger of examination went in the abdominal cavity. After conducting the post mortem, she handed over to Police the copy of PMR, police papers No.1 to 20 duly signed, sealed envelope containing sample of seal, copy of PMR, forwarding letter, cervico vaginal swab in sealed vial, swab from introitus of vagina in a sealed vial, clothes of deceased in sealed parcel. She gave an opinion that there is strong possibility of committing rape in this case.

On 5-7-1998, the accused Dharminder went to the house of Sarpanch of village, namely Harjinder-PW14 and confessed his guilt. He requested the Sarpanch to produce him before the police. Harjinder and Om Pal produced the accused before the police. On interrogation, the accused suffered a disclosure statement Ex.PR and in pursuance of that got recovered the scarf(chunni) of the deceased, which was used for

strangulation purpose, from the bushes near the place of crime. The said scarf was taken into possession vide memo Ex.PQ and site plan Ex.PS was drawn. The accused was however taken to hospital for medico legal examination where he was examined by Dr.VK Wadhawan, Medical Officer, PHC, Chhachhrauli, who found that the genital organs were well developed. Glans of penis was bluish in colour, prepuce was abraded on left upper quadrant. There was no injury to scrotum. No matting of pubic hair was seen. There was no mark of injury on the body except mention on penis.

In due course of time, the report of Chemical Examiner was also received and on completion of the investigation, charge sheet against the accused was filed in the Court of Illaqa Magistrate under Sections 376 and 302 of the Indian Penal Code.

On appearance of the accused before the Court of the Additional Sessions Judge, Jagadhri and finding a prima facie case, the accused was charged under Sections 376 and 302 of the Indian Penal Code. The said charges were read over and explained to the accused, to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution relied upon the testimony of 17 PWs. PW1-Mohinder Singh SI, SHO Police Station Farakpur prepared the report under Section 173 of the Code of Criminal Procedure and submitted the same in the Court of Illaqa Magistrate. PW2-Dalip Kumar ASI, Police Station Yamunanagar, on 30-7-1998 partly investigated the case and recorded the statements of MHC Dal Singh, Constable Rambir and Constable Raj Pal. PW3-Dal Singh, Head Constable tendered in the evidence affidavit Ex.PA. PW4-Constable Rambir Singh has tendered in evidence affidavit Ex.PB. PW5-Constable Raj Pal delivered the

special report to the Illaqa Magistrate at his residence and to other officers. He also handed over the sealed parcels to the Investigating Officer, which were taken into possession vide recovery memo Ex.PC. PW6-Jagdev Singh, Constable took the dead body of Anju to Civil Hospital, Jagadhri for post mortem examination. On 4-7-1998 after conducting the post mortem examination, the doctor handed over to him four sealed parcels containing the clothes of the deceased, copy of PMR and other documents i.e. Police papers etc. PW7-Dr.VK Wadhawan, Medical Officer, PHC, Chhachhrauli, medically examined the accused-Dharminder, whose version has already been appeared in the earlier part of the judgment while describing the facts of the case. According to this witness, the accused had the ability to perform the sexual act. PW8-Dr.Neenu Kalra, Gynaecologist, Civil Hospital, Yamunanagar conducted the post mortem examination on the dead body of Anju on police application Ex.PG. Her summarized version has already been appeared in the earlier part of the judgment while describing the facts of the case. PW9-Braham Dutt, Patwari Halqa, Tajewala prepared the scaled site plan Ex.PK at the instance of father and mother of the deceased. PW10-Raj Pal Singh ASI, Incharge Police Post Rampura on the receipt of ruqa Ex.PL, made endorsement Ex.PL/1 and recorded the formal FIR Ex.PL/2, which bears the signature. PW11-Soran son of Kashmira is the uncle of the deceased, who had last seen the deceased Anju while cutting the grass in the company of Dharminder in the fields of Om Pal at 10.00 A.M. In the evening, he learnt about the death of his niece at 2.00 P.M. He had seen the injuries on the neck of Anju (deceased) at 7.00 P.M. in her house. The dead body of Anju was recovered from the fields of Kesho Ram. The distance between the accused and Anju(deceased) was 4-5 paces when

she was last seen in the company of the accused and the place of crime from where the dead body was recovered was 10-15 paces from the place from where he had seen Anju(deceased) and the accused in the fields of Om Pal. Rajinder Singh-Sarpanch was also present in the house. PW12-Jagiro is the mother of Anju (deceased). On her statement, the police swung into action. She gave the detailed manner in which she found her daughter's dead body near the water-channel in the fields of Om Pal where accused Dharminder was present. She suffered a statement Ex.PL., the detailed version of which has already been appeared in the earlier part of the judgment while describing the facts. Despite of lengthy cross-examination, her testimony could not be shattered by the defence. PW13-Om Pal resident of Village Bahadurpur was the master of accused-Dharminder. Therefore, he has not supported the case of the prosecution. He was confronted with the statement Ex.PM where he has stated that on 3-7-1998 at about 9.00 A.M. his servant Dharminder was cutting the maize crop and Anju daughter of Dharampal was also cutting the grass with Dharminder. PW14-Harjinder Singh is the Sarpanch of the Village in whose presence the accused suffered extra judicial confession about the committing of rape and murder of Anju. He also sought the help of this witness to produce him before the police. He learnt about the incident dated 3-7-1998 on 5-7-1998 from the accused. On the same day, his brother told that Anju had been killed in the filed of Kesho Ram. PW15-Ramesh Chand son of Asha Ram, resident of Bahadurpur is the recovery witness in whose presence the scarf of Anju(deceased) was recovered with which Anju was strangulated. PW16-Harkesh Chand and PW17-Kanwar Singh are the Investigating Officers of the case, who conducted the investigation of the case.

After the evidence of the prosecution was closed, the accused was examined in terms of Section 313 of the Code of Criminal Procedure in which the entire incriminating evidence was put to him, to which he denied and pleaded innocence and false implication in the case.

In defence, the accused proffered to lead evidence but later on suffered a statement that he did not want to lead any evidence.

After going through the evidence of the prosecution, the learned Additional Sessions Judge, Jagadhri recorded the findings of conviction and sentence against the accused as mentioned in the opening para of the judgment.

On behalf of the appellant, it is contended by the learned counsel that the present case is based on circumstantial evidence and while disposing of this case, the learned Additional Sessions Judge, Jagadhri had taken into consideration the following circumstances which led to the conviction of the present accused-appellant:

> *"a) Immediate prior to the crime the accused and the deceased were seen together in the fields from where dead body was recovered.*
> *b) Extra judicial confession.*
> *c)Recovery of scarf used for strangulation at the instance of the accused.*
> *d) Medical evidence. Injury on the private organ of the accused and injuries on the genital of the deceased."*

Though the learned Additional Sessions Judge found the following circumstances mentioned at 'a' and 'd' sufficient to connect the accused with the commission of crime but dis-believed the circumstances of extra judicial confession and recovery of scarf used for

strangulation of Anju (deceased).

Now coming to the first circumstance, it has come in the testimony of PW11-Soran, who is the uncle of the deceased, he has categorically deposed in the Court that on 3-7-1998 he had seen the accused with Anju (deceased) in the fields of Om Pal while cutting the grass. Both of them were cutting the grass at a distance of 10-15 paces. There is also testimony of Smt. Jagiro, mother of Anju (deceased), who went to the fields of Om Pal in search of her daughter Anju where she found accused Dharminder harvesting the maize crop and on her asking the whereabouts of Anju, the accused told her that after cutting the grass, she proceeded towards the water-channel to cut more grass. On reaching there, she found the dead body of her daughter Anju. Her mouth was oozing blood. She brought the dead body of Anju to her house and thereafter she along with her husband went to the Police Station to report the matter. ASI Kanwar Singh met her on the way and after having recorded statement Ex.PL, FIR was registered against the accused. After the post-mortem examination, Dr.Neenu Kalra was of the view that Anju was raped and murdered and she suffered death due to strangulation of her neck with a piece of cloth. It is also not disputed that after the arrest of the accused, he was medically examined by PW7-Dr.VK Wadhawan, who found the glans of penis was bluish in colour. Prepuce was abraded on left upper quadrant. There was no other injury on any part of body, which shows that he had forcefully tried to commit rape on the person of Anju-minor on account of which her posterior vault of the vagina was torn ½ ' long placed transversely and was abdomen deep. In the opinion of the doctors, the cause of death was asphyxia due to strangulation. It has also come in the statement of PW7-Dr.VK Wadhawan that while

examining Dharminder accused, there was history of bathing two days back and changing clothes on 5-7-1998.

The learned Court has erred in dis-believing the statement of Harjinder Sarpanch before whom the accused suffered extra judicial confession that the accused was in the custody of the police on the date of occurrence which fact, if taken into consideration on the totality of the circumstances and the documents relied upon by the prosecution in the form of recovery memo and medical evidence, suggests one thing that PW15-Ramesh Chand has deliberately given the date of arrest of the accused as 3-7-1998. In case the accused was in the custody of police, there was no reason for the police to get the accused medically examined after two days when the factum of rape and murder had come to their notice after the post mortem examination conducted by PW8-Dr.Neenu Kalra on 4-7-1998. To this extent, the testimony of PW15-Ramesh Chand appears to be not trust worthy in terms of the statement of PW14-Harjinder, Sarpnach, who produced the accused before the police soon after the extra judicial confession suffered by him before this witness. It has come in the statement of PW14-Harjinder, Sarpanch that he learnt about the actual incident of 3-7-1998 from the mouth of accused on 5-7-1998 when he came to him, suffered an extra judicial confession and sought the help of this witness to produce him before the Police. It was thereafter accused suffered disclosure statement and got recovered scarf (chunni) from the place disclosed by him vide memo Ex.PQ on 5-7-1998. To this extent, the observations of the trial Court that the extra judicial confession suffered by the accused as well as recovery of scarf (chunni) is an act of padding, are not tenable. The cumulative effect of all the circumstances when taken into consideration,

raises an accusing finger towards the appellant that it is only the accused and none else, who had committed rape as well as murder of Anju minor daughter of Dharampal by strangulation on 3-7-1998 in the fields of Kesho Ram, Village Bhahdurpur Dalmirgarh, Police Station Chhachhrauli, District Yamunanagar.

In net result, this appeal is devoid of merits and the same is hereby dismissed.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

October 23, 2006
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